

## CANADA SUPREME COURT'S MURKY RULING ON "HATE SPEECH"

March 7, 2013 (David Cloud, Fundamental Baptist Information Service, P.O. Box 610368, Port Huron, MI 48061, 866-295-4143, fbns@wayoflife.org; for instructions about subscribing and unsubscribing or changing addresses, see the information paragraph at the end of the article)

In a major, though murky, ruling, the Supreme Court of Canada has determined that public opposition to homosexuality can be a "hate crime" under certain conditions.

On February 27, the Supreme Court upheld the conviction of William Whatcott who was charged with a hate crime by the Canadian Human Rights Commission after he distributed flyers in Saskatchewan in 2001 and 2002 opposing the homosexual agenda in public schools.

The flyers bore titles such as "Sodomites in Our Public Schools." One flyer cited 1 Corinthians 6:9 and said, "The Bible is clear that homosexuality is an abomination," and, "Scripture records that Sodom and Gomorrah was given over completely to homosexual perversion and as a result destroyed by God's wrath."

Yet, in spite of what some reports have implied, it wasn't the quotes from the Bible that brought the ruling that the fliers constitute a hate crime; it was Whatcott's statements that homosexuality leads inevitably to such things as child sexual abuse and the implication that all homosexuals are pedophiles. The Court said that the reason Whatcott's fliers were ruled as hate speech is that they "delegitimize homosexuals by referring to them as filthy or dirty sex addicts and by comparing them to pedophiles" ("Try as It Might, the Supreme Court Can't Sugar-coat Anti-Christian Censorship," *National Post*, Feb. 27, 2013).

In 2006, the Saskatchewan Human Rights Commission (SHRC) ruled against Whatcott and ordered him to pay \$17,500 to the complainants. This judgment was overturned in 2010 by the provincial Court of Appeal, and now the Supreme Court has overruled the lower court. Whatcott will probably be required to pay the original \$17,500 to the homosexuals who brought the matter to the attention of the Human Rights Commission plus the legal fees of the Commission.

Actually, the Court's ruling is not only a vicious attack on freedom of religion and freedom of speech, it is confusing, contradictory, and does little to clarify the issue of what is and is not "hate speech" in Canada.

On the one hand, the Court struck down the part of Saskatchewan's Human Rights Code that forbids the publishing or broadcasting of anything that would "ridicule, belittle or otherwise affront the dignity of any person or class of persons on the basis of a prohibited ground." The judges said these words are too broad and are not "rationally connected to the objective of protecting people from hate speech." The Court argued that "it is not enough that an individual or group might feel ridiculed or belittled. Rather, the material must arouse extreme feelings of 'detestation or vilification'" ("Hate Speech," *Globe and Mail*, Feb. 28, 2013).

That takes away some of the authority of the provincial human rights boards and makes it more difficult for speech to be branded as hateful. “Human rights commissions are on renewed notice that they may target only public expressions of true hatred that create a genuine climate of menace for a targeted group” (“Try as It Might,” *National Post*, Feb. 27, 2013).

Yet the Court upheld the part of Saskatchewan’s Human Rights Code that banned speech “that exposes, or tends to expose, persons or groups to hatred,” and this language and concept is nearly as ephemeral as the language that was rejected.

Again, on the one hand, the Court insisted that hate speech laws are “not aimed at discouraging repugnant or offensive ideas,” but that is exactly what it has done in its ruling against Whatcott, because it nowhere proved that the speech was hateful or that it exposed anyone to hatred.

Though the Court instructed human rights commissions not to rule on hate speech on the basis of emotion, its own ruling appears to be a subjective one based on emotion rather than facts, and it left the issue to reside in this ephemeral realm.

Therefore, nothing has really been settled, which in this day and time is probably a blessing! Because the Court’s ruling will not discourage the type of decisions that were made in Alberta in 2009 and in 2012 in favor of a pastor who had been treated harshly by the Alberta Human Rights Commission. In June 2002, the *Red Deer Advocate* printed Stephen Boissoin’s letter to the editor in which he warned about the “militant homosexual agenda” that was spreading “all manner of wickedness” in Canadian society and subjecting children to “psychologically and physiologically damaging pro-homosexual literature and guidance in the public school system.” Boissoin, a youth pastor at the time, urged his readers to “start taking back what the enemy has taken from you.” Homosexual activist Darren Lund, a professor at the University of Calgary, complained to the Human Rights Commission, which ruled not only that Boissoin had to write an apology and pay \$5000 to Lund, but the preacher could never again make a public statement relating to homosexuals. In 2009, a judge on the Court of Queen’s Bench ruled that Boissoin’s article did not constitute hate speech and declared that the human rights panel had no constitutional authority to order the punishments it had imposed (“Victory at Last,” *National Post*, Oct. 19, 2012). Lund appealed the decision to the Alberta Court of Appeal, which in October 2012 affirmed the lower court’s ruling in favor of Boissoin’s free speech.

Justice Clinton O’Brien made the following statement in its 2012 ruling: “Whether offensive or not, the letter was perceived to stimulate and add to an ongoing public debate on matters of public interest, as distinct from hate propaganda which serves no useful function and has no redeeming qualities. ... Boissoin and others have the freedom to think, whether stemming from their religious convictions or not, that homosexuality is sinful and morally wrong. In my view, it follows that they have the right to express that thought to others.”

The court also said that it was concerned that Canada's human rights law, because of a lack of clarity, can "cast a chill on the exercise of the fundamental freedoms, such as freedom of expression and religion."

The February 2013 Canada Supreme Court ruling does nothing to hinder judges from supporting the free speech of Canadian citizens and overturning the rulings of human rights commissions. In fact, as we have noted, it makes it more difficult for those bodies to condemn speech as "hate crimes" in the first place.

William Whatcott is a Roman Catholic activist who targets abortion and homosexuality in street protests. He is described by his lawyer as "a former street kid who used his body to pay for his drugs" ("Former 'Street Kid' William Whatcott," *National Post*, Feb. 26, 2013). He "found religion" in prison.

### **ATTEMPT TO ABOLISH SECTION 13 OF CANADA'S HUMAN RIGHTS ACT**

It is the legislature that needs to act to strengthen the citizen's protection of free speech and religion in the face of the concept of hate crimes, and an encouraging step has been taken toward this end. In June 2012, a bill was passed in Canada's Parliament repealing sections of the Human Rights Act, specifically section 13, which forbade "the communication of hate speech messages by telephone or on the Internet," and section 54, which dealt with associated penalties ("Good Riddance to Section 13 of the Canadian Human Rights Act," *National Post*, July 7, 2012).

On the night of the vote on the bill, Alberta Conservative MP Brian Storseth made the following statement in the House of Commons:

"Mr. Speaker, tonight every member of the House has the opportunity to vote for freedom. For far too long every Canadian's fundamental right to freedom of expression has been needlessly suppressed by an overzealous bureaucracy armed with section 13 of the Canadian Human Rights Act, a vague and highly subjective law operating under the cloak of ambiguity. While section 13 may have been implemented with well-meaning intentions, its implications reach much further, chilling free speech and stifling the growth and development of free expression in our society. It is time to take back our right to freedom of expression as the bedrock upon which all other freedoms are built and repeal section 13 of the Canadian Human Rights Act. It is time to take a stand for the rights of Canadians and our future generations. It is important that all members of the House take a moment to consider what we, as a free and democratic country, will lose if section 13 continues to be allowed to erode our freedom of speech. Thank you Mr. Speaker and God bless" ("Brian Storseth on Canadian Human Rights Act," in the House of Commons, June 6, 2012).

Though Bill C304 has passed by Parliament, it has not yet been passed by the Senate. This should be made a matter of prayer by Canada's churches.

In recent years there has been a push back by the Canadian populace against the concept of “hate speech” and the power of the human rights commissions. The Canadian Human Rights Commission received only three hate speech complaints since 2009, two of which were dismissed.

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